



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FACSIMILE (419) 255-5530 AND U.S. MAIL

SEP 15 2008

Jerome Phillips, Esquire
Wittenberg, Phillips, Levy & Nusbaum
840 Spitzer Building
Toledo, Ohio 43604

RE: MUR 5871/Joseph Restivo

Dear Mr. Phillips:

On August 19, 2008, the Federal Election Commission accepted the conciliation agreement submitted on behalf of your client, Joseph Restivo, in settlement of violations of 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalties are due within 30 days of the conciliation agreement's effective date.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", is written over a horizontal line.

Tracey L. Ligon
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of

Joseph Restivo

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MUR: 587P

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CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Joseph Restivo ("Respondent") knowingly and willfully violated 2 U.S.C. § 441f.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any person from making a contribution in the name of another, or for any person knowingly to permit his or her name to be used to make such a contribution. See 2 U.S.C. § 441f. Moreover, no

person may knowingly help or assist any person in making a contribution in the name of another.

11 C.F.R. § 110.4(b)(1)(iii).

2. During the 2003-2004 election cycle, a person could contribute no more than \$2,000 to a candidate and his or her authorized committee per election. *See* 2 U.S.C. § 441a(a)(1)(A).

3. On October 30, 2003, Bush-Cheney '04, Inc. hosted a campaign fundraiser at the Hyatt Regency hotel in Columbus, Ohio, to which the admission fee was a \$2,000 contribution – the maximum amount an individual could give to Bush-Cheney '04, Inc.

4. On May 31, 2006, Thomas W. Noe pled guilty to federal charges of making illegal conduit contributions in connection with the October 30, 2003 campaign fundraiser. The indictment stated that Mr. Noe used \$45,400 of his funds to make contributions over the legal limits, and concealed the true source of the contributions by making them in the names of other individuals, known as “conduits,” and also recruited “super-conduits,” who not only acted as conduits but also recruited additional conduits and passed funds from Mr. Noe to those additional conduits.

5. Thomas W. Noe provided a check in the amount of \$6,000 to Respondent as an advance on or reimbursement for contributions to Bush-Cheney '04, Inc. Respondent then wrote two checks in the amount of \$2,000 to additional conduits, Barton Kulish and Phillip Swy, as an advance on, or reimbursement for, contributions those conduits made to Bush-Cheney '04, Inc.

6. The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). An inference of a knowing and willful act may be drawn “from the defendant’s elaborate scheme for disguising” his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). *Id.* at 214-15.

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7. Respondent filled out a donor card stating that he was making a \$2,000 contribution drawn on his personal credit card that represents his personal funds when, in fact, the funds of Thomas W. Noe were used to make the contribution. In addition, Respondent recruited other conduits to make contributions to Bush-Cheney '04, Inc. and passed along funds from Mr. Noe to reimburse their contributions, knowing that the conduits would also be filling out donor cards indicating that they were making contributions with their personal funds when Noe's money was being used for the contributions.

8. Respondent contends that he participated in the reimbursement activity at issue at the request and suggestion of his brother-in-law Thomas W. Noe, who was a well-respected political leader in Ohio.

V. Respondent knowingly and willfully violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made in the name of another, and by assisting a person in making a contribution in the name of another.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Twenty-Five Thousand Dollars (\$25,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondent will cease and desist from violating 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made in the name of another or by assisting a person in making a contribution in the name of another.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


X. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

9/5/08
Date

FOR THE RESPONDENT:


Joseph Restivo

2/7/08
Date